

## Department of Energy

## Pt. 719

tax treatment of any facility or facility owner under the Internal Revenue Code and regulations.

### § 715.2 Definitions.

As used in this subpart—

*Act* means the Clean Air Act Amendments of 1990, 104 Stat. 2399.

*Facility* means a “new independent power production facility” as that term is used in the Act, 42 U.S.C. 7651o(a)(2).

### § 715.3 Definition of “Nonrecourse Project-Financed”.

*Nonrecourse project-financed* means when being financed by any debt, such debt is secured by the assets financed and the revenues received by the facility being financed including, but not limited to, part or all of the revenues received under one or more agreements for the sale of the electric output from the facility, and which neither an electric utility with a retail service territory, nor a public utility as defined by section 201(e) of the Federal Power Act, as amended, 16 U.S.C. 824(e), if any of its facilities are financed with general credit, is obligated to repay in whole or in part. A commitment to contribute equity or the contribution of equity to a facility by an electric utility shall not be considered an obligation of such utility to repay the debt of a facility. The existence of limited guarantees, commitments to pay for cost overruns, indemnity provisions, or other similar undertakings or assurances by the facility’s owners or other project participants will not disqualify a facility from being “nonrecourse project-financed” as long as, at the time of the financing for the facility, the borrower is obligated to make repayment of the term debt from the revenues generated by the facility, rather than from other sources of funds. Projects that are 100 percent equity financed are also considered “nonrecourse project-financed” for purposes of section 416(a)(2)(B).

## PART 719—CONTRACTOR LEGAL MANAGEMENT REQUIREMENTS

### Subpart A—General Provisions

Sec.

719.1 What is the purpose of this part?

719.2 What are the definitions of terms used in this part?

719.3 What contracts are covered by this part?

719.4 Are law firms that are retained by the Department covered by this part?

719.5 What contracts are not covered by this part?

719.6 Are there any types of legal matters not included in the coverage of this part?

719.7 Is there a procedure for exceptions or deviations from this part?

### Subpart B—Legal Management Plan

719.10 What information must be included in the legal management plan?

719.11 Who must submit a legal management plan?

719.12 When must the plan be submitted?

719.13 Who at the Department must receive and review the plan?

719.14 Will the Department notify the contractor concerning the adequacy or inadequacy of the submitted plan?

719.15 What are the requirements for a staffing and resource plan?

719.16 When must the staffing and resource plan be submitted?

719.17 Are there any budgetary requirements?

### Subpart C—Engagement Letter

719.20 When must an engagement letter be used?

719.21 What are the required elements of an engagement letter?

### Subpart D—Reimbursement of Costs Subject to This Part

719.30 Is there a standard for determining cost reasonableness?

719.31 How does the Department determine whether fees are reasonable?

719.32 For what costs is the contractor, or Department retained counsel, limited to reimbursement of actual costs only?

719.33 What categories of costs are unallowable?

719.34 What is the treatment for travel costs?

719.35 What categories of costs require advance approval?

719.36 Who at the Department must give advance approval?

719.37 Are there any special procedures or requirements regarding subcontractor legal costs?

719.38 Are costs covered by this part subject to audit?

719.39 What happens when more than one contractor is a party to the matter?

### Subpart E—Department Counsel Requirements

719.40 What is the role of Department counsel as a contracting officer's representative?

719.41 What information must be forwarded to the General Counsel's Office concerning contractor submissions to Department counsel under this part?

719.42 What types of field actions must be coordinated with Headquarters?

#### APPENDIX TO PART 719—GUIDANCE FOR LEGAL RESOURCE MANAGEMENT

AUTHORITY: 42 U.S.C. 2201, 5814, 5815 and 7101, *et seq.*; 50 U.S.C. 2401, *et seq.*

SOURCE: 66 FR 4621, Jan. 18, 2001, unless otherwise noted.

### Subpart A—General Provisions

#### § 719.1 What is the purpose of this part?

This part is intended to facilitate control of Department and contractor legal costs, including litigation costs. The contractor is required to develop a procedure for retaining legal counsel, and to document the analysis used to decide when, where and who will be engaged as outside counsel and the terms of the engagement. Payment of law firm invoices and reimbursement of contractor legal costs under covered contracts is subject to compliance with this part.

#### § 719.2 What are the definitions of terms used in this part?

For purposes of this part:

*Alternative dispute resolution* includes processes such as mediation, neutral evaluation, mini-trials and arbitration.

*Contractor* means any person or entity with whom the Department contracts for the acquisition of goods or services.

*Covered contracts* means those contracts described in § 719.3.

*Department* means the Department of Energy, including the National Nuclear Security Administration.

*Department counsel* means the individual in the field office, or Headquarters office, designated as the contracting officer's representative and point of contact for a contractor or Department retained legal counsel, for purposes of this part only, for submission and approval of the legal manage-

ment plan, advance approval of certain costs, and submission of a staffing and resource plan, as addressed in this part.

*Legal costs* include, but are not limited to, administrative expenses associated with the provision of legal services by retained legal counsel; the costs of legal services provided by retained legal counsel; the costs of the services of accountants, consultants, or others retained by the contractor or by retained legal counsel to assist retained legal counsel; and any similar costs incurred by or in connection with the services of retained legal counsel.

*Legal management plan* means a statement describing the contractor's practices for managing legal costs and matters for which it procures the services of retained legal counsel.

*Retained legal counsel* means members of the bar working in the private sector, either individually or in law firms, who are retained by a contractor or the Department to provide legal services.

*Significant matters* means legal matters, including litigation, involving significant issues as determined by Department counsel, and any legal matter where the amount of any legal costs, over the life of the matter, is expected to exceed \$100,000.

*Staffing and resource plan* means a statement prepared by retained legal counsel describing plans for managing a significant matter.

#### § 719.3 What contracts are covered by this part?

(a) This part covers cost reimbursement contracts:

(1) For an amount exceeding \$100,000,000, and

(2) Involving work performed at the facilities owned or leased by the Department.

(b) This part covers contracts otherwise not covered by paragraph 3(a) of this section containing a specialized clause requiring compliance with this part.

(c) This part also covers Department contracts with retained legal counsel where the legal costs are expected to exceed \$100,000.